

# A CHILD RIGHTS FRAMEWORK FOR ADDRESSING TRAFFICKING OF CHILDREN

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## INTRODUCTION

For much of its history, the United States has played a leading role in the development of human rights responses to children. It has employed the best interests of the child standard in case law and administrative decisions affecting children for well over 100 years, recognizing that children need special consideration.<sup>1</sup> It

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1. See Lynne Marie Kohm, *Tracing the Foundation of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM.

also established the world's first juvenile court, shifting the focus to rehabilitation of children.<sup>2</sup> More recently, the United States was arguably the most active participant in the drafting of the U.N. Convention on the Rights of the Child (CRC),<sup>3</sup> the world's first comprehensive treaty on children's rights.<sup>4</sup> The CRC is now the most widely-ratified human rights treaty in history, with 193 states parties.<sup>5</sup> Meanwhile, the United States has faltered not only in terms of leadership on children's rights but also with respect to mere participation; today, it stands with Somalia and South Sudan as the only countries in the world that are not a party to the CRC.<sup>6</sup> This symposium presents an important

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STUD. 337, 376 (2008) (stating that "[r]ather than being a recent legal phenomenon of the past few decades, the [best interests of the child] doctrine has been developed and rooted in American family law jurisprudence for the past two hundred years"). Although the best interests of the child standard has been the subject of critique in the modern era, its early use represented an innovation and move toward recognition that the child's interests merit distinct consideration.

2. Bernardine Dohrn, *Seize the Little Moment: Justice for the Child 20 Years at the Children and Family Justice Center*, 6 NW. J. L. & SOC. POL'Y 334, 334 (2011) (noting that the juvenile court established in Chicago in 1899 was the world's first).

3. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

4. See Cynthia Price Cohen, *Role of the United States in Drafting the Convention on the Rights of the Child: Creating a New World for Children*, 4 LOY. POVERTY L.J. 9, 25-26 (1998) ("The United States was by far the most active, making proposals and textual recommendations for thirty-eight of the forty substantive articles."); Cynthia Price Cohen, *The Role of the United States in the Drafting of the Convention on the Rights of the Child*, 20 EMORY INT'L L. REV. 185, 190 (2006) (noting that the U.S. influenced the text of nearly every article of the CRC and that "U.S. influence was so strong that some people referred to the Convention as the 'U.S. child rights treaty.'").

5. See *Convention on the Rights of the Child—Status of Ratifications*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited February 23, 2014).

6. *Id.* In 2006, 2007, and 2008, the United States was the only country to vote no on the U.N. General Assembly's annual Resolution on the Rights of the Child. See Brief for Amnesty Int'l, et al. as Amici Curiae Supporting Petitioners at 20, *Graham v. Florida*, 560 U.S. 48 (2009) (No. 08-7412, 08-7621).

opportunity to revisit the U.S. government's stance on the CRC and explore the potential benefits of U.S. ratification of the CRC.

My remarks focus on the issues of trafficking and commercial sexual exploitation of children, making this Essay different from many of the others in this Symposium. While other symposium participants have correctly highlighted the U.S. government's lack of progress on other children's rights issues, child trafficking and its attendant forms of exploitation are ones in which the U.S. government has maintained a leadership role on the international stage, evidenced in part by its ratification of the two most significant recent international treaties covering child trafficking—the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol on the Sale of Children) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol).<sup>7</sup>

Since the late 1990s, when I first started focusing on child trafficking and related issues of child exploitation, there have been numerous significant developments. Under both international law<sup>8</sup> and national law,<sup>9</sup> there now is a clearly

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7. See Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter *Optional Protocol on the Sale of Children*]; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Nov. 15, 2000) [hereinafter *Trafficking Protocol*].

8. See Optional Protocol on the Sale of Children; *supra* note 7, arts. 3, 8–9; Trafficking Protocol, *supra* note 7, arts. 5–6 & 9.

9. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (Mar. 7, 2013) (incorporating the Trafficking Victims Protection Reauthorization Act of 2013); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered titles of the U.S.C.A. (West 2010)); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered titles of the U.S.C.);

established three-pronged mandate to address human trafficking, whereby governments must criminalize and prosecute acts of trafficking and related offences, provide protection and assistance to victims and survivors, and implement prevention programs.<sup>10</sup> This sensible approach has provided a framework for a growing number of policymakers and child advocates to build an effective response to child trafficking. Despite this framework and the tireless efforts of many advocates, there is little evidence that the prevalence of child trafficking has declined.<sup>11</sup> Admittedly it is difficult to measure progress with any certainty because there are no reliable baseline data – and data collection in this area is particularly difficult.<sup>12</sup> Even with limited data, most experts agree that there is little evidence of a

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Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered titles of the U.S.C.); Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), *amended by* 22 U.S.C. §7101 (2006)).

10. Toko Serita, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking*, 36 N.Y.U. REV. L. & SOC. CHANGE 635, 645-646 (2012) (describing the “three P’s” of human trafficking responses); *see also* Trafficking Protocol, *supra* note 7, arts. 5-6 & 9; Optional Protocol on the Sale of Children, *supra* note 7, arts. 3, 8-9.

11. *See* Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 3020 (2006) (“[W]hile modest victories have been scored, international trafficking seems to be on the rise, not on the decline.”); Maria Tavano, *Trafficking in Persons: A Focus on Preventing Forced Labor*, 32 WOMEN’S RTS. L. REP. 324, 351 (2011) (“[W]hile more and more countries have joined the war on human trafficking, there is no evidence of a decrease in the prevalence of the crime.”).

12. *See* Elzbieta M. Gozdziaik & Micah N. Bump, Inst. for the Study of Int’l Migration, Georgetown Univ., Data and Research on Human Trafficking: Bibliography of Research-Based Literature 4 (2008) (“[T]here is little systematic and reliable data on the scale of [human trafficking].”); *see also* Johnny E. McGaha & Amanda Evans, *Where Are the Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239, 247, 259-60 (2009) (noting the “methodological weaknesses, gaps in data, and numerical discrepancies” in U.S. government reports on human trafficking). The clandestine nature of human trafficking and other issues make it particularly difficult to obtain accurate data on the issue. *See* sources cited *infra* note 37.

decline.<sup>13</sup> Why have we seen so little progress in reducing the prevalence of child trafficking and related forms of exploitation? One reason is that despite the comprehensive nature of the three-pronged framework for addressing child trafficking, the reality is that most of the work continues to focus on prosecuting perpetrators and, to a lesser extent, on assisting survivors. Few significant efforts have been aimed at prevention.

Prosecutions and survivor assistance are essential but they typically address child trafficking after the harm has occurred. We need to move upstream toward early intervention and ultimately prevention. I believe that a comprehensive child rights-based approach to trafficking would facilitate a move in that direction and improve the likelihood of preventing these forms of violence against children. Adopting a child rights framework would mean addressing children's civil, political, economic, social and cultural rights in a manner that accounts for the interdependent nature of rights. In particular, a child rights framework would provide both substantive and procedural benefits that would facilitate strengthening of systems in the United States to reduce children's vulnerability to exploitation and ensure their rights.

In Part I of this essay, I reflect briefly on what has been done to date to address child trafficking and examine whether these efforts have resulted in progress. Part II then assesses the current framework. Finally, in Part III, I offer thoughts on what a child rights-based approach would offer and why the CRC framework is needed in the area of child trafficking.

## I. THE MODERN MOVEMENT TO ADDRESS CHILD TRAFFICKING AND RELATED EXPLOITATION

This Part looks at the developments in the United States since the late 1990s, when I first examined child trafficking issues. In particular it focuses on law, services to survivors, and public awareness.

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13. See sources cited *supra* note 11.

The law on human trafficking has undergone dramatic changes since the late 1990s. When I first looked at this issue, the Trafficking Protocol, which articulated the first internationally agreed-upon definition of human trafficking (or trafficking in persons), and the Optional Protocol on the Sale of Children did not exist. In the United States, the Trafficking Victims Protection Act did not exist, and no state had an anti-trafficking law.<sup>14</sup>

Today, the law is dramatically different. At the global level, the Trafficking Protocol, adopted in 2000, forms the backbone of a growing international response; more than 150 countries and territories have adopted laws addressing some or all aspects of human trafficking.<sup>15</sup> The Optional Protocol on the Sale of Children, also adopted in 2000, provides a similar framework focused on child exploitation.<sup>16</sup>

The United States, as noted in the Introduction, has joined both treaties, and it also has developed major domestic legislation. The Trafficking Victims Protection Act, adopted in 2000 and reauthorized most recently in March 2013, has created

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14. See generally Chacón, *supra* note 11, at 2987-88 (stating that “[i]n the late 1990s, two high-profile stories of forced immigrant labor highlighted the existence of the trafficking problem in the United States. . . . At the time the two events unfolded, the law had no coherent way of dealing with the many victims of the trafficking scheme.”).

15. See U.N. OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2012, 83, U.N. SALES NO. E/13/IV/1 (Dec. 2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf); see also *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime –Status of Ratifications*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-12-a&chapter=18&lang=en) (last visited June 24, 2013) (159 ratifications as of February 24, 2014); *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography–Status of Ratifications*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-11-c&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11-c&chapter=4&lang=en) (last visited June 24, 2013) (166 ratifications as of February 24, 2014).

16. See Optional Protocol on the Sale of Children, *supra* note 7.

a framework for federal government action and resources.<sup>17</sup> Other federal laws, such as the PROTECT Our Children Act of 2008, further strengthen the U.S. government response.<sup>18</sup> Additionally, all fifty states now have anti-trafficking laws.<sup>19</sup>

Services for victims and survivors have also increased greatly. In the 1990s, there were few services for child victims or survivors of trafficking or commercial sexual exploitation.<sup>20</sup> Today, emerging systems of care are developing in a number of states. Thousands of service providers have attended human trafficking related training programs.<sup>21</sup> More shelters have opened, specializing in services for child survivors of trafficking and commercial sexual exploitation.<sup>22</sup> Hospitals are developing

17. See sources cited *supra* note 9.

18. Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008, 42 U.S.C. §17611 (Supp. II 2009)) [hereinafter PROTECT Our Children Act of 2008]. The mandate for a national strategy focused primarily on criminal justice aspects of these issues. *Id.*

19. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 381 (2013) [hereinafter TIP REPORT 2013], available at <http://www.state.gov/documents/organization/210742.pdf>.

20. Elizabeth K. Hopper, *Underidentification of Human Trafficking Victims in the United States*, 5 J. SOC. WORK RES. & EVALUATION 125, 128 (2004) (noting the "complete lack of services for trafficking victims" prior to the adoption of the TVPA in 2000).

21. See U.S. DEP'T OF STATE, OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY: PERIODIC REPORT OF THE UNITED STATES AND U.S. RESPONSE TO COMMITTEE RECOMMENDATIONS IN COMMITTEE CONCLUDING OBSERVATIONS OF JUNE 25, 2008, at ¶¶ 75-87 (Jan. 22, 2010) [hereinafter U.S. REPORT ON OPTIONAL PROTOCOL ON THE SALE OF CHILDREN], available at <http://www.state.gov/documents/organization/136023.pdf> (detailing the training providing to law enforcement and service providers and that as part of the U.S. government's training efforts, "[t]he total number of law enforcement and other persons trained by the task forces since the inception of the program is 85,448").

22. *Shelter Beds for Human Trafficking Survivors in the United States*, POLARIS PROJECT, at 5, <https://na4.salesforce.com/sfc/p/300000006E4S9liF7eeqnplT97HRFH4FvCSI5v4=> (last visited June 3, 2013) (reporting a total of 1644 beds in the U.S. for human trafficking survivors, 529 of which are reserved exclusively for trafficking survivors, and noting that 28 states did not have any beds reserved exclusively for human trafficking survivors).

capacity to identify and respond to children who are suspected victims.<sup>23</sup>

Finally, public awareness has grown substantially. When I started working on this issue, people would ask me what I did, and when I responded that I work on trafficking issues, most assumed it was drug trafficking, and occasionally some individuals would respond with comments about the congestion on the roads during rush hour. Most people had not heard of human trafficking. It was not in the mainstream. Today, human trafficking is regularly in the news. Follow any major newspaper for a few weeks, and you are likely to see a human trafficking story, or perhaps several. Hollywood is busy producing movies on human trafficking (many of which unfortunately misinform rather than inform). January is recognized as National Slavery and Human Trafficking Prevention Month in the United States.<sup>24</sup> Finally, and perhaps most meaningfully, hundreds of organizations have joined the fight against human trafficking in the past fifteen years.<sup>25</sup>

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23. See Roy Ahn et al., *Human Trafficking: Review of Educational Resources for Health Professionals*, 44 AM. J. PREVENTIVE MED. 283, 288 (2013) (stating that “the development and refinement of evidence-based guidelines for health professionals on the identification of, and response to, trafficking situations, should be a priority area. Appropriate education and training about human trafficking . . . can enable the healthcare workforce to become an active, vital partner in human trafficking identification, intervention, and prevention”) For an example of training modules for health care professionals see *id.*; see also Amber McKeen, *Child Sex Trafficking: What Else Do We Need to Know?*, CHILD. HEALTHCARE ATLANTA, <http://www.choa.org/~media/CHOA/Documents/Services/Child-Protection-Center/CSEC-Webinars/Module-4-Special-Topics-2013.pdf> (last visited June 3, 2013).

24. See Proclamation No. 8471, 75 Fed. Reg. 1267 (Jan. 4, 2010) (presidential proclamation by Barack Obama declaring January 2010 as National Slavery and Human Trafficking Prevention Month and calling on all Americans to join together in the effort to end human trafficking).

25. Although there is no single directory of all U.S. organizations with anti-trafficking initiatives, various lists suggest the number of organizations involved has increased significantly. See, e.g., *Human Trafficking Awareness Month (January 2014)*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/resources/public-awareness/human-trafficking#q1> (last



All of this seems quite impressive, but it does not actually tell us whether we have made progress. In many respects, it is evidence of significant achievement built on hard work by advocates for children and by children themselves. We should take time to reflect on and appreciate those efforts and achievements. On the one hand then, when I ask whether we have made progress, the easy answer is “yes”; we have adopted some very good law, particularly criminal law, and prosecuted a number of traffickers; we have established social services for survivors in many places where they did not exist before and have connected existing systems of care; and we have raised awareness among the general population.

However, asking whether we have made progress does not simply mean assessing whether there has been activity, even good activity. To answer the question of progress, we must return to our goals. What is the goal in this context? I argue that prevention must be the ultimate goal. In my view, *progress* occurs when the prevalence trafficking declines. So the key question is whether the prevalence of trafficking has declined. Despite our efforts, there is little evidence to suggest that it has, though measuring this is a challenge.<sup>26</sup> Part of the reason for this is that most of the great work we are doing—law enforcement investigations and victim/survivor services—addresses child trafficking primarily after some harm has occurred. I am not minimizing the importance of aiding survivors or prosecuting

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visited February 24, 2014); *List of Organizations Opposing Human Trafficking*, WIKIPEDIA, at [http://en.wikipedia.org/wiki/List\\_of\\_organizations\\_opposing\\_human\\_trafficking](http://en.wikipedia.org/wiki/List_of_organizations_opposing_human_trafficking) (last visited February 24, 2014).

26. See U.S. Govt. Accountability Office, Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad 2 (2006), available at <http://www.gao.gov/new.items/d06825.pdf> (criticizing U.S. government estimates of human trafficking as “questionable” and finding “[t]he accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies”); Elizabeth M. Wheaton et al., *Economics of Human Trafficking*, 48 INT’L MIGRATION 114, 118 (2010) (stating that “[w]hile there is substantial evidence that trafficking takes place within the United States . . . as in the rest of the world, it is hard to quantify the number of trafficked individuals”).

exploiters. Both are crucial components of a response. However, if our goal is reducing the prevalence of child trafficking, preventing it from happening in the first place, then we still have a long road ahead.

## II. THE LIMITS OF THE CURRENT RESPONSE TO CHILD TRAFFICKING

The limited progress to date should prompt policymakers and child advocates to examine why that is the case. One reason is that our focus has not been on prevention. By that I mean that although we all want this exploitation to stop, governments and non-governmental organizations have spent most of their time addressing trafficking and related exploitation of children after the harm has occurred.<sup>27</sup> We have been reactive, rather than proactive. One key component of the prevailing response to child trafficking in the United States is its emphasis on criminal justice responses.

### A. Starting with Criminal Justice

Given the nature of child trafficking, it is not surprising that the first instinct among many policymakers is to develop criminal law that enables the state to punish perpetrators of these abuses. Those who traffic and exploit children should be punished. However, a criminal justice response to any social problem or harm has inherent limits.<sup>28</sup> One primary problem today is expecting more of a criminal justice response than it is designed to produce.

First, criminal justice models are not designed to address scope of harm. Criminal justice foremost involves the state and

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27. I recognize that apprehending perpetrators prevents them from inflicting further harm on children. However, most law enforcement interventions come after some harm has occurred.

28. See, e.g., Nirej Sekhon, *Redistributive Policing*, 101 J. CRIM. L. & CRIMINOLOGY 1171, 1198-99 (2011) (arguing that criminal justice driven approaches to narcotics and minor crimes generate inequality without solving underlying social problems).

the perpetrator of crime. Retributive justice models are not designed to heal the victim,<sup>29</sup> yet trafficked children suffer “physical, sexual, and emotional violence at the hands of traffickers, pimps, employers, and others, and they are exposed to various workplace, health, and environmental hazards.”<sup>30</sup> Simply put, criminal justice by its very nature is not designed to account for the range of harms caused by human trafficking, nor should it be expected to do so.<sup>31</sup>

Second, criminal justice models typically do very little to address the root causes of a problem.<sup>32</sup> Criminal justice

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29. Mike C. Materni, *Criminal Punishment and the Pursuit of Justice*, 2 BRIT. J. AM. LEGAL STUD. 263, 301 (2013) (“[R]estorative justice *cares about the victim* - a figure that, along with its needs, is utterly absent in the more traditional approaches to (and literature on) criminal punishment.”) (emphasis in original); Nsongurua J. Udombana, *Pay Back Time in Sudan? Darfur in the International Criminal Court*, 13 TULSA J. COMP. & INT’L L. 1, 44 (2005) (“The problem with rectificatory or retributive justice has been its *ex post facto* nature, which does not always bring real healing to victims of grave crimes.”). U.S. law now provides for mandatory restitution in human trafficking criminal cases. 18 U.S.C. § 1593 (West 2012). *But see* Theodore R. Sangalis, *Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act*, 80 FORDHAM L. REV. 403, 403, 405-06 (2011) (stating that “[t]hrough several reauthorizations, one federal strategy that has emerged is compensating the victims through mandatory criminal restitution and civil remedies. Collection of restitution damages has been lacking, however. . . . Restitution in connection with the criminal case—the only other statutory means of compensating these survivors—either has not been ordered, not been collected, or been woefully inadequate.”).

30. Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447, 463 (2011).

31. *Id.* at 467.

32. Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1725 (2010) (“[T]he criminal justice approach is a limited one. It addresses the consequences of the trafficking phenomenon but not its root causes.”); Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT’L L. 1, 34 (2010) (stating “although law enforcement plays a vital role in combating trafficking and commercial sexual exploitation of children, it does not address the roots of these human rights violations”); *see also* Jean R. Sternlight, *Is Alternative Dispute Resolution Consistent with the Rule of Law? Lessons from Abroad*, 56 DEPAUL L. REV. 569, 579 (2007).

frameworks focus on select “bad actors” rather than the underlying complex social, economic, and political conditions that foster child trafficking.<sup>33</sup> They do not include measures that attend to underlying supply issues—that is, what makes certain children vulnerable to trafficking. They also do little to address the demand for cheap goods and services, which provides the pressure that fuels trafficking and its attendant forms of exploitation.<sup>34</sup>

Third, a criminal justice response to child trafficking has limits even with respect to criminal law’s central objectives: holding perpetrators accountable for their crimes and deterring other individuals from committing crimes.<sup>35</sup> In 2012, there were an estimated 4,746 convictions for human trafficking globally.<sup>36</sup> Although this represents a record number of convictions and is evidence of the continued strengthening of law enforcement responses, most experts would suggest these successes capture a relatively small percentage of the total number of actual trafficking cases.<sup>37</sup> In addition, although the adoption of anti-

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(noting “the criminal justice system’s inability to fundamentally address the root causes of domestic violence.”).

33. Jennifer M. Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 158 U. PA. L. REV. 1609, 1628 (2010).

34. Luz Estella Nagle, *Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude*, 26 WIS. INT’L L.J. 131, 139 (“The opening of trade barriers and the emergence of new regional and global markets has created a huge demand for cheap or free labor for the service and manufacturing sectors and for sexual exploitation in a burgeoning international sex tourism industry. The ability of many businesses to stay competitive in a globalizing economy depends on the capacity to assemble and retain a labor force for the least amount of investment.”).

35. See Dina Francesca Haynes, *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers*, 26 HUM. RTS. Q. 221, 244 (2004) (discussing the limits of prosecution-oriented models and finding “[w]ith trafficking on the rise, it does not appear that any [anti-trafficking] laws yet serve as a deterrent”); Todres, *supra* note 30, at 459-60.

36. TIP REPORT 2013, *supra* note 19, at 46.

37. See Int’l Labour Org. [ILO], *ILO Global Estimate of Forced Labor: Results and Methodology*, at 13 (2012), available at

trafficking laws may produce some deterrent effect, criminal justice research indicates that further enhancing criminal sanctions will provide relatively little additional deterrence.<sup>38</sup> We may still determine that lengthy sentences for traffickers are important, but we must realize the limitations of this response.

As the “war on drugs” has demonstrated with its reliance on heavy sanctions, criminal law alone is not sufficient to tackle these complex problems and may even produce unintended consequences.<sup>39</sup> The root causes of child trafficking must be

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[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf) (estimating 20.9 million individuals trapped in trafficking and forced labor settings). Any reports on the total numbers of victims are estimates at best. On data-related challenges, see, for example, U.N. Office on Drugs and Crime, *The Vienna Forum to Fight Human Trafficking, 024 Workshop: Quantifying Human Trafficking, Its Impact and the Responses to It*, at 2-3 (2008), available at <http://www.unodc.org/documents/human-trafficking/2008/BP024QuantifyingHumanTrafficking.pdf>. (“The difficulties connected with researching human trafficking are related to the nature of the subject itself. . . . At present, statistical data on trafficking in persons frequently do not meet the basic standards for statistical accounting: at the global and regional levels, detailed data are simply not available and even when data are presented, they are frequently partial, incomplete and unreliable.”). Underreporting is a significant issue. *Id.* at 6-7, 14 (discussing reasons for underreporting, including victims’ vulnerability and fear that traffickers will seek retribution if they report them).

38. Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 OXFORD J. LEGAL STUD. 173, 173 (2004); Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L.J. 949, 977 (2003) (“[T]he ability of doctrinal manipulation to produce an alteration of deterrent effect is highly limited . . . .”); see also James A. Mercy et al., *Public Health Policy for Preventing Violence*, HEALTH AFFAIRS, no. 4, 1993, at 7, 11 (“Although the average prison time served for a violent crime in the United States tripled between 1975 and 1989, there was no concomitant decrease in the level of violent crimes.”).

39. See, e.g., David D. Cole, *Formalism, Realism, and the War on Drugs*, 35 SUFFOLK U. L. REV. 241, 252 (2001) (“By all accounts, the war on drugs has been a failure. Although nearly half a million people are locked up for drug crimes, drugs are cheaper, purer, and more easily available than ever before. . . . Further, the criminalization of drugs . . . creat[es] the incentive and opportunity for substantial organized criminal activity.”); Kal Raustiala, *Law, Liberalization & International Narcotics Trafficking*, 32 N.Y.U. J. INT’L L. &

addressed. Today, many prosecutors and law enforcement officers are working diligently to identify and respond to human trafficking cases. It is clear from the past decade, however, that as a society we cannot prosecute our way out of this problem. Law enforcement is necessary but not sufficient. We also need to draw upon other approaches and sectors to strengthen our response to child trafficking.

### B. Toward a Victim-Centered Response

A number of scholars and advocates have highlighted the limits of a criminal justice model<sup>40</sup> and pressed for a victim-centered approach.<sup>41</sup> Greater attention to the rights and needs of victims and survivors is an important step. However such efforts still address the problem after the harm has occurred.

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POL. 89, 113 (2002) (“If effectiveness is defined as ‘problem solving,’ clearly the [legal response to illicit drugs] has not been effective. The drug problem has not abated, and, in the view of many experts, it is getting worse.”).

40. See, e.g., Chacón, *supra* note 33; Chuang, *supra* note 32; Mike Dottridge, *Introduction* to COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 1, 1 (Mike Dottridge, Global Alliance Against Traffic in Women eds., 2007) (“[T]he priority for governments around the world in their efforts to stop human trafficking has been to arrest, prosecute and punish traffickers, rather than to protect the human rights of people who have been trafficked.”); Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 345-52 (2007).

41. See, e.g., Jennifer A.L. Sheldon-Sherman, *The Missing “P”: Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 PENN ST. L. REV. 443, 446 (2012) (“Victims’ advocates, however, maintain that it is fundamentally problematic to use a law enforcement perspective in fighting trafficking, particularly with regard to a law that, as evidenced by its name, was enacted to provide protection to trafficking victims. These critics thus urge legislators to adopt a more victim-centered model for addressing trafficking.”). *But see* Janie Chuang, *Beyond a Snapshot: Preventing Human Trafficking in the Global Economy*, 13 IND. J. GLOBAL LEGAL STUD. 137, 151-152 (2006) (“Even well-intentioned efforts to adopt a more ‘victim-centered approach’ to the problem can promote a narrow conception of trafficking that diverts attention from its broader labor and migration causes and implications.”).

Moreover, calling for a victim-centered approach will not necessarily produce the desired outcome. First, with respect to other crimes, the victims' rights movement in the United States has in many instances produced harsher sentences for defendants and not more meaningful rehabilitation and reintegration services for victims.<sup>42</sup> Second, assuming a call for a victim-centered approach does end up truly focused on providing for victims and survivors, such efforts still might have limited utility unless accompanied by more significant structural changes.<sup>43</sup> Research on agencies with multiple goals reveals that "agencies faced with conflicting tasks will systematically overperform on the tasks that are easier to measure and have higher incentives, and underperform on the tasks that are harder to measure and have lower incentives."<sup>44</sup> Therefore, we can anticipate that prosecutors and law enforcement officers who are told to adopt a victim- or survivor-centered approach will over time likely end up prioritizing arrests, prosecutions, and convictions over survivors' needs, because the former are easier to measure and have greater incentives tied to them. After all, a police officer who reports at the end of the year that he or she did not make any arrests but was particularly considerate to crime victims is unlikely to be promoted. In order for a call for a victim-centered approach to work over time, training needs to change and departmental incentives need to be modified, so that the new goal—employing a victim-centered approach—is valued as a primary objective.

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42. Lynne Henderson, *Co-Opting Compassion: The Federal Victim's Rights Amendment*, 10 ST. THOMAS L. REV. 579, 590 (1998) ("[A]ll too often, the compassion for a victim's suffering transforms into attacks on the criminal justice process and 'criminals,' rather than inquiring into how we can help victims to recover and heal. . . . [S]ince the original victim's rights movement began, there has been a move towards harsher and longer punishments for convicted offenders.").

43. See Eric Biber, *Too Many Things to Do: How to Deal with the Dysfunctions of Multiple-Goal Agencies*, 33 HARV. ENVTL. L. REV. 1, 9 (2009) (discussing research on how agencies with multiple goals perform).

44. *Id.*

Assessments of the current response to child trafficking and related forms of exploitation reveals important limitations. Without reorienting our approach, or at least supplementing it with significant additional measures aimed at prevention, it will be difficult to reduce the prevalence of child trafficking.

### III. THE VALUE OF A CHILD RIGHTS FRAMEWORK

Over the past decade in the United States, policymakers and child advocates have developed a number of important measures to respond to child trafficking.<sup>45</sup> However every success—the conviction of a trafficker or provision of services for survivors—also reflects a failure to prevent these abuses of children. Greater attention must be directed toward preventing the harm in the first place.

As I have discussed elsewhere, no single step or approach will end child trafficking. Governments and civil society must develop and implement a comprehensive multi-sector response, as methodologies and expertise from various sectors have a role to play in preventing trafficking of children.<sup>46</sup> In this Essay, I outline briefly what a child rights-based approach can contribute to a comprehensive response.

A rights-based approach offers potential benefits in two important respects: procedural and substantive. Most lawyers and advocates tend to focus primarily on the value of substantive rights enshrined in international human rights law, but process

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45. See discussion *supra* Part I.

46. See Helga Konrad, *The OSCE and the Struggle Against Human Trafficking: The Argument for a Comprehensive, Multi-Pronged Approach*, 1 INTERCULTURAL HUM. RTS. L. REV. 79, 85 (2006) (“The work in combating human trafficking must be based on a comprehensive approach to this multifaceted problem . . . .”); Jonathan Todres, *Human Rights, Labor, and the Prevention of Human Trafficking: A Response to a Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. DISCOURSE 142, 158 (2013) (“[A] multisector approach that employs methodologies from human rights, labor, public health, international development, and other paradigms offers the best hope of developing a comprehensive response that can reduce the prevalence of human trafficking.”).



matters and must not be overlooked. Thus, I start here with procedural benefits of a child rights-based framework.

In 2000, the United Nations adopted two optional protocols to the CRC: the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (Optional Protocol on the Sale of Children), and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.<sup>47</sup> Two years later, under the George W. Bush Administration, the United States ratified both Optional Protocols.<sup>48</sup> Ratification of the two CRC Optional Protocols represented a departure from typical U.S. practice of moving very slowly toward ratification of human rights treaties (e.g., by comparison it took the United States approximately four decades to ratify the Convention on the Prevention and Punishment of the Crime of Genocide).<sup>49</sup>

The U.S. experience with the Optional Protocols not only undermines conservative arguments that human rights treaties threaten sovereignty—the United States ratified both and has participated in the reporting process without ceding any of its sovereignty—it also provides a lesson in the value of the reporting process.<sup>50</sup> Under the Optional Protocol on the Sale of

47. A third Optional Protocol was adopted in December, 2011. Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, U.N. Doc. A/RES/66/138 (Dec. 19, 2011). It will enter into force three months after the tenth ratification or accession. *See id.* art. 19. Currently six countries have ratified the new Optional Protocol. *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure—Status of Ratifications*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en) (last visited June 26, 2013).

48. U.S. Dep’t of State, *Ratification of Optional Protocols to the Convention on the Rights of the Child* (Dec. 23, 2002), available at <http://2001-2009.state.gov/r/pa/prs/ps/2002/16198.htm> (last visited Feb. 22, 2014).

49. *See* Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 421 (1979) (“The United States has been active in promoting human rights in the United Nations, in the Organization of American States, and in other international institutions. But the United States has not been a pillar of human rights, only a ‘flying buttress’—supporting them from the outside. . . . [W]e have not accepted international human rights for ourselves.”).

50. A related concern expressed by opponents of human rights treaty ratification is that it cannot work for a system of federalism. Setting aside that it

Children, which adopted a three-pronged approach (prosecution, protection, and prevention) similar to the Trafficking Protocol and the TVPA, states parties are required to report to the Committee on the Rights of the Child within two years of ratification and every five years thereafter.<sup>51</sup>

### A. Procedural Benefits: The Reporting Process

Human rights treaty reporting procedures are undervalued in the United States, and often viewed with skepticism.<sup>52</sup> Critics ask what incentive states have to take the process seriously if there is no threat of sanction associated with failing to comply with a treaty's mandate.<sup>53</sup> Those arguments ignore the fact that international law, particularly human rights law, is enforced differently from domestic law; among the various enforcement mechanisms, public scrutiny before the international community compels many governments to follow the mandate of human rights law.<sup>54</sup> The reporting process plays a key role in advancing

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has worked for other countries that have similar systems of government and within the U.S. for other treaties the U.S. has ratified, the issue of child trafficking provides further evidence that a system of federalism is not a barrier to human rights implementation. Federal and state laws coexist in the area of human trafficking.

51. Optional Protocol on the Sale of Children, *supra* note 7, art. 12.

52. Yvonne M. Dutton, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms*, 34 U. PA. J. INT'L L. 1, 5 (2012) (noting that "many international human rights treaties have nonexistent or weak enforcement mechanisms—often only requiring that states self-report compliance....").

53. *Id.* at 12; Pamela Quinn Saunders, *The Integrated Enforcement of Human Rights*, 45 N.Y.U. J. INT'L L. & POL. 97, 113 (2012) ("[M]ost human rights treaties continue to utilize some sort of reporting or monitoring system, and treaties' utilizing adjudicative tribunals remain the exception. This remains true despite the fact that human rights advocates have long been concerned that 'toothless' reporting regimes offer no direct relief for victims.").

54. See, e.g., Sandeep Gopalan, *Alternative Sanctions and Social Norms in International Law: The Case of Abu Ghraib*, 2007 MICH. ST. L. REV. 785, 795 (2007) ("States are not isolated entities—they are members of international institutions, clubs, and other organizations. . . . It is this enmeshment in groups that presents conditions ripe for the deployment of

countries' efforts to ensure the rights of individuals subject to their jurisdiction. Moreover, a reporting process centered on children, as the CRC's reporting process is, ensures that governments are focused sufficiently on children's needs and are progressing toward ensuring the rights and well-being of *all* children.

The U.S. government has been reviewed twice under the Optional Protocol on the Sale of Children (as well as the Optional Protocol on Children in Armed Conflict)—in 2008 and 2013.<sup>55</sup> Before discussing the U.S. experience, it is worth explaining briefly how the review process works.

The formal portion of the review process begins with the government submitting its report to the Committee on the Rights of the Child.<sup>56</sup> Non-governmental organizations (NGOs) with expertise on the subject matter develop an "alternative report" (or "shadow report") which is submitted to the Committee on the

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shame sanctions."); Louis Henkin, *Human Rights and State "Sovereignty"*, 25 GA. J. INT'L & COMP. L. 31, 44 (1996) ("We have also revolutionized law enforcement. States can be shamed, and the system resorts increasingly to mobilizing shame."); *see also* Saunders, *supra* note 53, at 100 ("While enforcement via reporting and monitoring has often been criticized, such critiques fail to consider the ways in which reporting may work in tandem with other types of enforcement. . . . [T]he strengths of reporting mechanisms, though different from the strengths of adjudicative mechanisms, can be leveraged by courts to significant advantage.").

55. *See* U.N. COMM. ON THE RIGHTS OF THE CHILD, CONCLUDING OBSERVATIONS ON THE SECOND PERIODIC REPORT OF UNITED STATES UNDER THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY, REP. ON ITS 62ND SESS., JAN. 14-FEB. 5, 2013, U.N. DOC. CRC/C/OPSC/USA/CO/2 (Jan. 25, 2013) [hereinafter CONCLUDING OBSERVATIONS SECOND REPORT]; U.N. Comm. on the Rights of the Child, Concluding Observations: United States of America, Rep. on its 48th Sess., June 6, 2008, U.N. Doc. CRC/C/OPSC/USA/CO/1 (June 25, 2008), *available at* <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf> [hereinafter CONCLUDING OBSERVATIONS INITIAL REPORT].

56. *See, e.g.*, U.S. Dep't of State, Initial Rep. of the United States of America to the UN Committee on the Rights of the Child Concerning the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (2007), *available at* <http://www.state.gov/documents/organization/84647.pdf>.

Rights of the Child.<sup>57</sup> In some cases, several alternative reports are submitted, but typically there is one lead alternative report. Following that, the Pre-Session Working Group is held.<sup>58</sup> That session provides the Committee with an opportunity to meet with select NGO representatives and pose questions to individuals who are particularly familiar with children's rights issues in the country in question. The alternative reports and pre-session working group meetings ensure that NGOs play a meaningful role in the review process. After meeting with NGO representatives, the Committee produces its List of Issues.<sup>59</sup> The List of Issues is a set of follow up questions for the government under review, typically noting where there may be gaps in the government's report and asking for further information.<sup>60</sup> The

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57. See, e.g., ECPAT-USA, ALTERNATIVE REPORT TO THE INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY (2007), available at <http://ecpatusa.org/wp/wp-content/uploads/2013/08/ECPAT-USA-Alternative-Report-USA-2007.pdf> [hereinafter ECPAT-USA, FIRST ALTERNATIVE REPORT]; ECPAT-USA, ALTERNATIVE REPORT: AN NGO RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY (2012), available at <http://ecpatusa.org/wp/wp-content/uploads/2013/08/Alt-Report-USA-2012-Final-with-submitting-orgs-2-19-2012.pdf> [hereinafter ECPAT-USA, SECOND ALTERNATIVE REPORT].

58. *Overview of the Working Methods of the Committee. on the Rights of the Child*, § III.A, OHCHR, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/WorkingMethods.aspx> [hereinafter CRC Committee Working Methods] ("Prior to the Committee session at which the State party's report is reviewed, the pre-sessional working group of the Committee convenes a private meeting with UN agencies and bodies, NGOs, and other competent bodies such as National Human Rights Institutions and youth organizations, which have submitted additional information to the Committee.").

59. See *id.* ("The end result of the pre-sessional working group's discussion on a State report is a 'list of issues.'").

60. See *id.* ("The list of issues is intended to give the Government a preliminary indication of the issues which the Committee considers to be priorities for discussion. It also gives the Committee the opportunity to request

government has a period of time to respond to the Committee, after which the official Committee session with the government delegation is held.<sup>61</sup> Finally, after meeting directly with the government in the official public session, the Committee publishes its Concluding Observations, which includes its summary of the country's progress and recommendations to the government for further action to ensure children's rights and well-being.<sup>62</sup>

Three elements of the process are particularly notable: First, the Committee consists of a group of independent experts.<sup>63</sup> Committee members serve in their individual capacity, based on the fact that they are experts on children's rights issues, and do not represent any government in their Committee work.<sup>64</sup> Thus, they do not carry with them a particular government's political agenda as representatives in the Security Council or other areas of the U.N. system often do. Second, there is a formal process for NGO involvement which the Committee takes very seriously and which ensures that advocates who work in the field have input into the review process.<sup>65</sup> Third, the review process is a

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additional or updated information in writing from the Government prior to the session."); see e.g., U.N. COMM. ON THE RIGHTS OF THE CHILD, LIST OF ISSUES CONCERNING ADDITIONAL AND UPDATED INFORMATION RELATED TO THE SECOND PERIODIC REPORT OF THE UNITED STATES OF AMERICA, 62ND SESS., U.N. Doc. CRC/C/OPSC/USA/Q/2 (July 25, 2012), available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.USA.Q.2.pdf>; U.N. Comm. on the Rights of the Child, List of Issues to be Taken up in Connection with the Consideration of the Initial Report of the United States of America, 48th Sess., U.N. Doc. CRC/C/OPSC/USA/Q/1 (Feb. 26, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.USA.Q.1.pdf>.

61. See *Comm. on the Rights of the Child—Sessions*, OHCHR, <http://www2.ohchr.org/english/bodies/crc/sessions.htm> (last visited July 12, 2013).

62. See, e.g., CONCLUDING OBSERVATIONS SECOND REPORT, *supra* note 55.

63. *Committee on the Rights of the Child—Members*, OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS (Mar. 1, 2013), <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Membership.aspx>.

64. See *id.*

65. CRC Committee Working Methods, *supra* note 58, § VIII.

dialogue between the Committee and the government; it is intended to be a collaborative process during which the Committee and the government explore and identify best practices and gaps so that the government can improve its capacity to protect and ensure children's rights and well-being.<sup>66</sup> It is not envisioned as an adversarial process.

### *1. The Initial Review of the United States*

As noted above, the U.S. government has been through this process twice. I was privileged to be an NGO representative who provided testimony on U.S. compliance with the Optional Protocol on the Sale of the Children to the Committee on the Rights of the Child at the Pre-Session Working Group meetings in both 2007 and 2012. I was also in Geneva as an observer for the Committee's official session with the U.S. government in 2008.

During the U.S. government's initial review, there were several notable developments. First, U.S.-based NGOs working on trafficking and commercial sexual exploitation of children made a significant contribution to the process. ECPAT-USA (End Child Prostitution and Trafficking—USA branch) led the effort with forty-three other organizations signing on to its alternative report.<sup>67</sup> During the Pre-Session Working Group meeting, the Committee members reinforced the valuable role of NGOs, asking thoughtful questions to ensure they had a complete picture of the relevant law, policy, and programs aimed at protecting children in the United States.<sup>68</sup>

Second, the entire reporting process demonstrated that it is a collaborative process. The Committee asked tough but fair questions of the U.S. government with a view to achieving a goal shared by both the Committee and the U.S. government:

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66. *Id.* § III.B.

67. ECPAT-USA, FIRST ALTERNATIVE REPORT, *supra* note 57.

68. As the Pre-Session Working Group is a private meeting, *see* CRC Committee Working Methods, *supra* note 58, § III.A, these are my own observations as an NGO delegate who participated in the meetings.

identifying ways to improve protections for children and ensure their rights.

Third, the first review of the U.S. government demonstrated how the reporting process is supposed to function after the official session is over. Following the official session, the Committee issued its Concluding Observations, which highlighted U.S. progress to date and also identified several important gaps.<sup>69</sup> The Committee made a number of recommendations, including the need for a coordinated national plan of action for responding to child trafficking and related forms of exploitation.<sup>70</sup>

After the review process was completed, ECPAT-USA organized briefings in New York City and Chicago to inform human rights groups and child advocacy organizations and professionals about the reporting process and outcomes.<sup>71</sup> ECPAT-USA's work on disseminating information about the review process also led to congressional briefings in the U.S. House of Representatives and U.S. Senate.<sup>72</sup> Following these briefings, ECPAT-USA met with then-Senator Joe Biden's office to discuss the outcomes of the review of the United States by the Committee on the Rights of the Child.<sup>73</sup> Subsequently, Senator Biden took a lead role in developing and introducing legislation to address some of the findings from the reporting

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69. See CONCLUDING OBSERVATIONS INITIAL REPORT, *supra* note 55.

70. *Id.* ¶¶ 11, 13.

71. A forum for NGO and U.N. representatives was held in New York on June 18, 2008, and a forum was held in Chicago for NGO representatives, child advocates, and interested professionals on March 20, 2009. See also *The Law of the Land: U.S. Implementation of Human Rights Treaties: Hearing Before the S. Judiciary Subcomm. on Human Rights and the Law* (2009) (testimony of Professor Jonathan Todres and Carol Smolenski) [hereinafter *Human Rights and the Law Hearing Testimony*], available at <http://ecpatusa.org/wp/wp-content/uploads/2013/08/ECPATUSATodresSmolenskiSenateStatement1209FINAL.pdf> (last visited Feb. 21, 2014).

72. Briefings were held in the House of Representatives and Senate on July 22, 2008.

73. *Human Rights and the Law Hearing Testimony*, *supra* note 71, at 4.

process.<sup>74</sup> Ultimately that bill became the PROTECT Our Children Act of 2008, which further strengthened the U.S. government's response to child trafficking; its measures included a mandate for a national plan of action and expanded data collection efforts, which addressed two of the main recommendations that emerged from the review process under the Optional Protocol on the Sale of Children.<sup>75</sup>

Although many advocates including myself viewed the PROTECT Our Children Act to be weighted toward criminal justice responses, its adoption represented an important first step—recognition of the need for a national plan of action and the starting point for developing a more comprehensive evidence-based response to child trafficking and related forms of exploitation. Thus, although the resulting legislation may be imperfect (as legislation often is), the process that occurred still represents a positive example of how the reporting process is supposed to work and demonstrates its value. Monitoring and evaluation are crucial to the success and effectiveness of any law, policy or program.<sup>76</sup> The reporting process is simply a formalized means of ensuring regular evaluation of law, policy, and programs aimed at ensuring children's rights and well-being. Following the U.S. review, with input from local child advocacy organizations (e.g., ECPAT-USA and others) and independent

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74. Then-Sen. Biden sponsored the bill that became the PROTECT Our Children Act of 2008. *See* S. 1738 (110th)—PROTECT Our Children Act of 2008 <https://www.govtrack.us/congress/bills/110/s1738>.

75. PROTECT Our Children Act of 2008, *supra* note 18, § 101; *see also* CONCLUDING OBSERVATIONS INITIAL REPORT, *supra* note 55, at ¶¶ 9, 11 (recommending the U.S. develop a comprehensive national plan of action and a systematic data collection system).

76. *See, e.g.,* TARA M. SULLIVAN & DEEPA RAMCHANDRAN, MEASURING SUCCESS OF A CONTINUING-CLIENT STRATEGY 3 (2007), *available at* <http://www.k4health.org/sites/default/files/MeasuringSuccessofCCStrategy.pdf> (“Monitoring and evaluation is a fundamental component of all health programs.”); *see also* CTRS. FOR DISEASE CONTROL & PREVENTION, INTRODUCTION TO PROGRAM EVALUATION FOR PUBLIC HEALTH PROGRAMS: A SELF-STUDY GUIDE 1 (2011), *available at* <http://www.cdc.gov/eval/guide/CDCEvalManual.pdf> (“Strong program evaluation is essential now more than ever.”).



experts (i.e., the Committee's Concluding Observations), U.S. legislators developed a response that they deemed to be appropriate. The action taken by the U.S. government was not enough to solve the problem, but it was a significant step and demonstrates that the human rights treaty reporting process can help identify opportunities for improving protections of rights of individuals here in the United States. Not only is this process not a threat to U.S. sovereignty, it is a valuable vehicle for improving our response to threats to our children.

Now imagine if that initial review was not limited to the narrow mandate of the Optional Protocol on the Sale of Children. If the U.S. government ratified the CRC, the review would be more thorough and would help to identify many of the underlying causes of child trafficking. A review under the CRC would require a comprehensive assessment. Such a review would produce a more complete picture of what is needed to address child trafficking and other harms to children and would spur more effective responses in the United States that go beyond the criminal justice arena and emphasize preventive measures.

## *2. The Second Review of the United States*

In 2010, the U.S. government submitted its second report to the Committee on the Rights of the Child.<sup>77</sup> ECPAT-USA again led the NGO effort, submitting an alternative report endorsed by sixty-two other organizations.<sup>78</sup> Two additional alternative reports were submitted this time by other NGOs providing valuable additional information on U.S. compliance with the Optional Protocol on the Sale of Children.<sup>79</sup> I again was

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77. U.S. REPORT ON OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, *supra* note 21.

78. ECPAT-USA, Second Alternative Report, *supra* note 57.

79. See CTR. FOR THE HUMAN RIGHTS OF CHILDREN AT LOYOLA UNIV. OF CHI. & THE YOUNG CTR. FOR IMMIGRANT CHILDREN'S RIGHTS AT THE UNIV. OF CHI., ALTERNATIVE REPORT: AN NGO RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE

privileged to be one of the NGO representatives to provide testimony to the Committee on the Rights of the Child at the Pre-Session Working Group. The Committee then held its official session with the U.S. government in January 2013.<sup>80</sup> In its Concluding Observations, the Committee again noted where progress had been made and also issued a number of important recommendations.<sup>81</sup> So once again policymakers and advocates for children have an opportunity to come together to develop policies and programs that address existing gaps in services for children to ensure their rights and well-being.

In these brief remarks, I cannot mention all of the recommendations from the Committee's 2013 Concluding Observations but will highlight a select few. First, a lack of reliable data continues to be an issue, and the Committee recognized that, calling on the U.S. government to "[d]evelop and implement a comprehensive and systematic data collection system, including for analysis, monitoring and impact assessment."<sup>82</sup> Good data are essential to assessing progress and evaluating effectiveness of policies and programs, and monitoring mechanisms need greater priority.

Second, the Committee also recommended that the U.S. government:

[E]xtend and strengthen its training activities and ensure that [trainings] are provided to all relevant professionals working

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RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (2012), *available at* [http://luc.edu/media/lucedu/chrc/pdfs/CHRC\\_UN20120827web\\_1.pdf](http://luc.edu/media/lucedu/chrc/pdfs/CHRC_UN20120827web_1.pdf); Children's Studies Ctr. for Research, Policy and Pub. Serv. at Brooklyn College of the City Univ. of N.Y., *Alternative Report and Legislative Annex on New York State Measures Giving Effect to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (2012), *available at* [http://www2.ohchr.org/english/bodies/crc/docs/2012\\_Alt\\_Report\\_Part\\_1and2toPrint09.2012.pdf](http://www2.ohchr.org/english/bodies/crc/docs/2012_Alt_Report_Part_1and2toPrint09.2012.pdf).

80. CONCLUDING OBSERVATIONS SECOND REPORT, *supra* note 55, at 1.

81. *See, e.g., id.* ¶¶ 5, 6 (positive aspects). For the Committee's recommendations, see the even-numbered paragraphs beginning at ¶ 8. *Id.*

82. CONCLUDING OBSERVATIONS SECOND REPORT, *supra* note 55, ¶ 8(a).

with and for children, including judges, public prosecutors, police officers, immigration and customs officers, medical staff, social welfare officers, religious and community leaders, organizations accredited for adoption, media and other professionals and all technical staff concerned.<sup>83</sup>

As ECPAT-USA identified in its alternative report, it is crucial that all individuals who come into contact with children in their professional capacity receive ongoing training to enable them to prevent, identify and respond to child trafficking and related forms of exploitation.<sup>84</sup> Training must reach a greater number of individuals and must be ongoing and its impact evaluated.

Third, the Committee also recommended that the U.S. government “provide identifiable budget allocations to implement and evaluate application of the Optional Protocol.”<sup>85</sup> In the current economy, securing resources for any program is challenging; yet it is clear that greater resources are needed in this area. Services for victims and survivors have increased, but too few victims are able to avail themselves of services still.<sup>86</sup> Very little identifiable funding is targeted at reducing vulnerability of at-risk children and preventing these forms of exploitation.

Finally, the Committee highlighted the importance of addressing root causes and structural factors that create the conditions that foster child exploitation in the United States. It urged the U.S. government to “[p]romote awareness and understanding of social norms and perceptions regarding child prostitution and child pornography with a view to changing attitudes and behaviour of those demanding sexual services and of officials enforcing the law in order to prevent child sexual

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83. *Id.* ¶ 20.

84. ECPAT-USA, SECOND ALTERNATIVE REPORT, *supra* note 57, at 20.

85. CONCLUDING OBSERVATIONS SECOND REPORT, *supra* note 55, ¶ 22.

86. *Id.* ¶ 44 (finding that services for victims and survivors “are severely lacking amounting to a few hundred shelter beds throughout the entire State party for sexually exploited children, mostly funded by private institutions and private charity organizations”).

exploitation, whether for commercial or other reasons, and avoid victimization of children.”<sup>87</sup> Addressing underlying attitudes that foster a climate in which child exploitation is tolerated is crucial.<sup>88</sup> The Committee also called on the U.S. government to:

Undertake research on root causes, public awareness programmes and public debates in order to identify and protect the most vulnerable children, including children living in poverty, migrant children, children living in difficult family situations, including runaway and homeless children, native American children especially females, boys who tend to be throwaways and runaways, LGBT children, adolescent girls and ‘in-system’ children, who are at particular risk of being victims of the offences covered under the Optional Protocol, and provide them with the necessary support and assistance.<sup>89</sup>

This recommendation highlights the issue with the prevailing approach that focuses mostly on interventions after the harm has occurred. As I have discussed, policies and programs aimed at preventing these abuses need much greater attention. Schools offer one locale where there are meaningful opportunities for prevention and early intervention.<sup>90</sup> The Committee also recognized this in calling on the U.S. government to “[d]evelop school-based prevention and early intervention programmes and

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87. *Id.* ¶ 24(a).

88. Todres, *supra* note 30, at 487-93.

89. CONCLUDING OBSERVATIONS SECOND REPORT, *supra* note 55, ¶ 24(d).

90. KATE WALKER, CALIFORNIA CHILD WELFARE COUNCIL, ENDING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: A CALL FOR MULTI-SYSTEM COLLABORATION IN CALIFORNIA 33 (2013) (“Because virtually all children are involved in the education system, some agencies and [community-based organizations] have focused on the school setting as a useful place to identify children who are being subjected to CSE or are at-risk of CSE.”); *see also* INST. OF MED. & NAT’L RESEARCH COUNCIL, CONFRONTING COMMERCIAL SEXUAL EXPLOITATIONS AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES 305-316 (2013) (discussing the role of schools in preventing sex trafficking of minors and highlighting notable school-based programs).

involve all key stakeholders and children.”<sup>91</sup> Ultimately, addressing the root causes of the problem is the only way that we will prevent these abuses of children.

As discussed in this section and as evident from the Committee’s Concluding Observations, the reporting and evaluation process under the Optional Protocol on the Sale of Children plays a vital role in identifying both promising practices and gaps or inadequacies in our responses to child trafficking. U.S. ratification of the CRC would require the U.S. government to similarly report on a regular basis on a comprehensive mandate aimed at ensuring children’s rights and well-being.<sup>92</sup> Given the value that the reporting process has shown to have in addressing the narrow mandate of the Optional Protocol on the Sale of Children, it stands to reason that the benefits could multiply if the U.S. government undertook the same review and evaluation across all issues that affect the rights and well-being of children, as enshrined in the CRC. In short, by using the CRC’s reporting process, we can identify strategies for improving conditions for vulnerable and exploited children.

### B. Substantive Benefits: Rights to Address Vulnerability

The CRC provides a template of substantive rights that impose a mandate on countries to address the root causes and prevent child trafficking and attendant forms of exploitation. One of the most valuable aspects of human rights is that it aims to address vulnerability.<sup>93</sup> A major issue in the context of child

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91. CONCLUDING OBSERVATIONS SECOND REPORT, *supra* note 55, ¶ 24(e).

92. The U.S. government does participate in the Universal Periodic Review and is a party to the International Covenant on Civil and Political Rights and other human rights treaties that have regular reporting requirements. However, the focus of those treaty bodies and review processes is not children, and their coverage of issues affecting children’s rights and well-being is minimal.

93. See Brian Concannon Jr. & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 EMORY INT’L L. REV. 1145, 1171 (2011) (“The rights-based approach reduces

trafficking is that so many children in the United States are vulnerable to exploitation. By their very nature, children are more vulnerable to exploitation than adults; their developmental stage may indicate limited physical and emotional maturity to fend off abusers, and they may also lack language skills needed to call attention to themselves when their rights are violated.<sup>94</sup>

Although we are still learning about the risk factors for trafficking and commercial sexual exploitation of children,<sup>95</sup> relevant research in other areas has identified issues that heighten children's vulnerability to exploitation. For example, research shows that lack of regular access to health care increases the chances of adverse health consequences.<sup>96</sup> In turn, poor health affects performance at school and can result in

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the underlying vulnerability by analyzing and addressing root causes of poverty and disasters, rather than simply responding to the immediate results thereof.”); Susannah Sirkin, *The Debacle of Hurricane Katrina: A Human Rights Response*, 30 FLETCHER F. WORLD AFF. 223, 225 (2006) (“[R]espect for the rights of all can reduce, minimize, and in many cases eradicate such vulnerabilities.”).

94. GERALDINE VAN BEUREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD*, xx (1995) (explaining that children are “easy targets” due to their vulnerability and arguing that “[m]any violations of children’s rights are only possible because of the invisibility of children,” in that they are “less able to draw attention to violations of their rights because they are disenfranchised and may lack the verbal skills or necessary contacts to make their protests heard”); Shelley Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using A Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55, 62 (2001) (“Because children are particularly vulnerable to coercion and exploitation through abuse of authority and dominant position by adults, trafficking in children is a substantial human rights issue that deserves a special focus.”).

95. See Inst. of Med. & Nat’l Research Council, *supra* note 90, at 123-25.

96. Michael D. Kogan et al., *Underinsurance Among Children in the United States*, 363 NEW ENG. J. MED. 841, 845 (2010) (“[U]nderinsured children were significantly more likely to be without a medical home, to have delayed or forgone care, and to have difficulty obtaining needed specialist care.”); see Paul W. Newacheck et al., *Health Insurance and Access to Primary Care for Children*, 338 NEW ENG. J. MED. 513, 514-16 (1998) (demonstrating that children with no health insurance are consistently less likely to receive adequate medical care).

higher absenteeism and falling behind one's peers, which increases the chances of dropping out early.<sup>97</sup> Children who leave school early or even those who are still enrolled but are out of school regularly are prime targets for traffickers—young, with limited skills, and vulnerable.<sup>98</sup>

In the United States, significant numbers of children on the street have run away from abusive homes or been thrown out of their home.<sup>99</sup> Millions of children do not have regular access to health care,<sup>100</sup> increasing their risk of poor health outcomes that can adversely affect school performance. Millions of children in the United States also encounter other significant barriers to

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97. Matthew C.H. Jukes et al, *School Health, Nutrition and Education for All: Levelling the Playing Field* 41 (2008); World Health Org., *Focusing Resources on Effective School Health: A FRESH Start to Improving the Quality and Equity of Education* 5 (2000) [hereinafter WHO], available at <http://www.unicef.org/lifeskills/files/FreshDocument.pdf> ("Poor health and malnutrition are important underlying factors for low school enrollment, absenteeism, poor classroom performance, and early school dropout . . ."); see also JOY MILLER DEL ROSSO & TONIA MAREK, *CLASS ACTION: IMPROVING SCHOOL PERFORMANCE IN THE DEVELOPING WORLD THROUGH BETTER HEALTH AND NUTRITION* 11 (1996) ("Healthier and better nourished children stay in school longer, learn more, and become healthier and more productive adults."); Deborah L. Crooks, *American Children at Risk: Poverty and Its Consequences for Children's Health, Growth, and School Achievement*, 38 AM. J. PHYSICAL ANTHROPOLOGY (Supp. 2) 57, 57 (1995) ("Poor health and poor growth are likely to lead to poor school achievement via deficits in cognitive functioning, behavior and activity, and increased absenteeism and school failure.").

98. Melissa Dess, *Walking the Freedom Trail: An Analysis of the Massachusetts Human Trafficking Statute and Its Potential to Combat Child Sex Trafficking*, 33 B.C. J.L. & SOC. JUST. 147, 158 (2013) ("[T]raffickers often recruit individuals who lack education, are homeless, or are victims of abuse.").

99. Toni Naccarato et al., *The Foster Youth Housing Crisis: Literature, Legislation, & Looking Ahead*, 23 ST. JOHN'S J. C.R. & ECON. DEV. 429, 434 (2008) ("Homeless adolescents often have histories of physical or sexual abuse, neglect, family conflict, and educational, residential and/or family instability.").

100. *Health Insurance: Highlights: 2011*, UNITED STATES CENSUS BUREAU, <http://www.census.gov/hhes/www/hlthins/data/incpovhlth/2011/highlights.html> ("In 2011, 9.4 percent of children under age 18 (7.0 million) were without health insurance . . . . The uninsured rate for children in poverty, 13.8 percent, was higher than the rate for all children, 9.4 percent.").

educational achievement.<sup>101</sup> All of these issues highlight the fact that while the United States does well by many children, there is still work to be done.

The CRC addresses all of these issues and enshrines corresponding rights, including the right to freedom from abuse and neglect and rights to housing, health care, education, and more.<sup>102</sup> Ensuring the right to a home environment free from abuse would reduce the risk of a range of harms.<sup>103</sup> Fulfilling every child's health rights and education rights can also reduce vulnerability.<sup>104</sup> Keeping children, especially girls, in school is one of the best ways of reducing vulnerability and enhancing prospects for better opportunities over a person's lifespan.<sup>105</sup> In addition, the principle of non-discrimination recognized in the CRC and other human rights law can be employed to address gender-based violence and discrimination.<sup>106</sup> Today, for example, the sexualization of young girls, which is built on gender-based discrimination, fosters an environment tolerant of child exploitation.<sup>107</sup> For example, rather than being recognized

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101. Crystal L. Jones, *No Child Left Behind Fails the Reality Test for Inner-City Schools: A View from the Trenches*, 40 CUMB. L. REV. 397, 461 (2010) (describing the U.S. education system as creating "inner-city and rural communities with over-crowded, under-funded schools producing drop outs and students who lack the knowledge and skills necessary to succeed in the workforce or in higher education."); E. Christopher Johnson Jr., *Increasing Diversity and Creating Responsible Citizens and Leaders in Pipeline Programs*, MICH. B.J. 32, 34 (Jan. 2012) ("[T]he ABA Commission on Youth at Risk reports that youth in urban and other underprivileged areas are more vulnerable to the enticements of human traffickers because many do not have much hope beyond a life on the streets.").

102. CRC, *supra* note 3, arts. 19, 24, 27, 28.

103. CRC, *supra* note 3, art. 19.

104. DEL ROSSO & MAREK, *supra* note 97, at 11.

105. See UNICEF, MILLENNIUM DEVELOPMENT GOALS – GOAL 2: ACHIEVE UNIVERSAL PRIMARY EDUCATION, <http://www.unicef.org/mdg/education.html> (last visited Feb. 1, 2014) ("[D]enying children access to quality education increases their vulnerability to abuse, exploitation and disease. Girls, more than boys, are at greater risk of such abuse when they are not in school.").

106. CRC, *supra* note 3, art. 2.

107. Alexandra Amiel, *Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual*



as exploitation, pimping is frequently glorified.<sup>108</sup> Other forms of discrimination are also relevant and addressed by the CRC, including discrimination on the basis of race, ethnicity or nationality.<sup>109</sup> These bases of discrimination have been highlighted as underlying risk factors of child trafficking.<sup>110</sup> In short, the various substantive rights in the CRC, if fulfilled, can reduce children's vulnerability to various forms of exploitation, including trafficking.

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*Exploitation*, 12 BUFF. HUM. RTS. L. REV. 5, 41 (2006) (noting that "[t]he social and cultural practices which disfavor women [and] encourage violence and discrimination against women" leave women at increased risk of being trafficked); Robert E. Freeman-Longo, *Reducing Sexual Abuse in America: Legislating Tougher Laws or Public Education and Prevention*, 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 303, 305 (1997) ("Most sexual abuse is illegal, but there are aspects of our culture, lifestyle, and sexual interests and behaviors that are abusive of sexuality, and yet they are legal.").

108. For example, the song "It's Hard Out Here for a Pimp" was awarded an Oscar in 2006.

109. CRC, *supra* note 3, art 2.

110. Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, ¶ 55, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000) (by Radhika Coomaraswamy) ("Gender-based discrimination intersects with discriminations based on other forms of 'otherness,' such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalization."); Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 124-25 (2003) (noting that traffickers target women from particular racial or ethnic groups). In many locations, racial and ethnic minorities constitute a disproportionate percentage of victims. *See, e.g.,* FRANCES GRAGG ET AL., NEW YORK PREVALENCE STUDY OF COMMERCIALLY SEXUALLY EXPLOITED YOUTH, ii (2007), *available at* <http://www.ocfs.state.ny.us/main/reports/CSEC-2007.pdf> ("CSEC in NYC were predominantly female (85 percent), Black/African American (67 percent), and 16 to 17 years old (59 percent).").

### C. Children's Role in Advancing Children's Rights

One final issue merits attention—the role of children in preventing child trafficking and related forms of exploitation. Children are an essential partner in this endeavor. We need to give a voice to child survivors and other youth who are vulnerable.<sup>111</sup> Prior to becoming a lawyer, I worked for a number of years in international development. A foundational principle in international development is that one must partner with local communities and the target population of any intervention.<sup>112</sup> Top-down imposition of so-called solutions is a recipe for failure. Thus, in order to achieve success in reducing the prevalence of child trafficking, we have to partner with children and youth. There are significant challenges associated with partnering with youth, including needing to ensure we do not subject them to further trauma, but youth, especially adolescents, can provide extraordinary insights into where the risks are and what interventions would be successful.<sup>113</sup>

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111. See Todres, *supra* note 32, at 25-26; Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 208 (2007) (“The inclusion of survivor voices is crucial to re-examining and redefining the United States’ anti-trafficking efforts.”).

112. See GUY BESSETTE, INVOLVING THE COMMUNITY: A GUIDE TO PARTICIPATORY DEVELOPMENT COMMUNICATION 141 (2004) (“[T]he implementation of development initiatives will not have much impact without the effective participation of the communities.”).

113. See UNICEF INNOCENTI RESEARCH CTR., CHILD TRAFFICKING IN EUROPE: A BROAD VISION TO PUT CHILDREN FIRST v (2008) (“Children’s experiences, recommendations and actions to prevent trafficking are often overlooked when developing programmes and initiatives to address trafficking and to assist those children who have been trafficked.”); Mike Dottridge, *Young People’s Voices on Child Trafficking: Experiences from South Eastern Europe* vi (UNICEF Innocenti Research Ctr., Working Paper No. IWP-2008-05, 2008), available at [http://www.unicef-irc.org/publications/pdf/iwp\\_2008\\_05.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2008_05.pdf) (“[Children] are ‘experts’ on the factors that make children vulnerable, their reasons for leaving home, and their special needs regarding prevention, assistance[,] and protection. Children and young people have an important role to play in helping to identify areas for intervention, design relevant solutions[,] and act as strategic informants of research.”).

As part of partnering with youth, we must ensure that survivors have a voice in this process. Too often they are ignored until one is invited to testify at a legislative hearing about his or her experience of being trafficked in order to ensure the hearing has emotional impact. Limiting a survivor to providing personal testimony to convince legislators to support anti-trafficking measures is not meaningful participation. Indeed, when such events are announced, they are frequently framed as “we will hear testimony today from three experts and one survivor.”<sup>114</sup> We need to revamp our mindset and realize that that is four experts. Survivors have a tremendous amount to offer and must be given a voice and not just used to advance others’ agendas, no matter how well-intentioned.

In short, we need to collaborate with children and youth—both those who have survived such trauma and others who are at-risk of exploitation. That partnership must occur at every stage of the process; children and adolescents should have input on the design, implementation, monitoring and evaluation of law, policy, and programs that affect their lives.<sup>115</sup> That will make the process of developing new law, policy and programs more challenging, but it also will ensure that the ideas that we develop are ones that will benefit children.

In its Concluding Observations, the Committee on the Rights of the Child also called on the U.S. government to “[c]onsult and enlist children and young people whose experience and insights

114. See, e.g., Press Release, H. Comm. on Foreign Affairs, Trafficking Victims to Testify at Chairman Royce’s California Field Hearing on Human Trafficking (Oct. 30, 2013), *available at* <http://foreignaffairs.house.gov/press-release/trafficking-victims-testify-chairman-royce-s-california-field-hearing-human> (“[T]wo trafficking victims, Angela Guanzon and Carissa Phelps, will provide compelling testimony about their horrific trafficking experiences, and insights into how to better prevent trafficking and protect victims” at an upcoming Committee field hearing entitled “Regional Perspectives in the Global Fight Against Human Trafficking,” also featuring U.S. Ambassador-at-Large Luis CdeBaca, Orange County District Attorney Tony Rackauckas, and Kay Buck, CEO of the Coalition to Abolish Slavery and Trafficking).

115. Jonathan Todres, *Assessing Public Health Strategies for Advancing Child Protection: Human Trafficking as a Case Study*, 21 J.L. & POL’Y 93, 107-08 (2012).

can help identify areas for intervention, can design relevant solutions and act as strategic informants of research.”<sup>116</sup> That recommendation must not be overlooked.

As I have discussed here, a child rights framework offers both substantive law and valuable procedures that can help advance efforts to prevent and respond to child trafficking. The Optional Protocol on the Sale of Children is an important framework, but it was never intended to be implemented in isolation.<sup>117</sup> It was intended to be part of a holistic child rights framework built on the CRC, because that is what provides the broader mandate to address the root causes of these and other harms to children.<sup>118</sup> Therefore, with respect to trafficking and related abuses of children, an area in which the United States has been a leader, the CRC is still needed to help move beyond a narrow criminal justice approach toward a comprehensive response that enables us to prevent these forms of child exploitation.

## CONCLUSION

The task before us—ending child trafficking—is not an easy one. We know that we cannot prosecute our way out of this problem. The prosecutors and law enforcement officers I have spoken with over the years consistently state this. Other stakeholders need to be involved. Addressing child trafficking requires a multisector effort, and creative thinking.

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116. CONCLUDING OBSERVATIONS SECOND REPORT, *supra* note 55, ¶ 24(f).

117. Indeed it makes only one reference to state obligations to address root causes. Optional Protocol on the Sale of Children, *supra* note 7, art. 10(3) (“States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.”).

118. UNICEF INNOCENTI RESEARCH CTR., HANDBOOK ON THE OPTIONAL PROTOCOL ON THE CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY viii (2009), available at [http://www.unicef-irc.org/publications/pdf/optional\\_protocol\\_eng.pdf](http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf) (“The [Optional Protocol on the Sale of Children] builds on and enhances both the general principles of the CRC and its specific rights.”).

If we are going to end this gross violation of children's rights, then in addition to prosecuting perpetrators and assisting victims and survivors after the fact, we need to take prevention seriously. One of the most promising vehicles for strengthening prevention efforts is to utilize a child rights framework built on the CRC that recognizes the dignity of each child and addresses the root causes of these abuses of children.

